

PLM-II

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES

WASHINGTON, D.C. 20548

9706

FILE: B-192264

DATE: April 3, 1979

MATTER OF: De Facto Employee

[EMPLOYEE May Be Compensated for SERVICES PERFORMED]

DIGEST:

An individual was told to, and did report for an HEW "summer hire" program but when the request for appointment was submitted, the name was too far down the register to be reached. The individual was not appointed and stopped working. The individual was a de facto employee, and may be compensated for the services actually rendered to HEW.

This is in response to a request for an advance decision submitted by Ms. Virginia Wingo, Certifying Officer, Division of Central Payroll and Reports Processing, Department of Health, Education, and Welfare (HEW), concerning the authority to pay an individual for work performed even though that individual was never officially appointed to a position with HEW.

Claimant
The ~~person involved~~ was told to, and did, report for work in a "summer hire" program, before being officially appointed. When the "name" request for Personnel Action was processed, the individual was too low on the register to be reached. This person then stopped working for HEW, but has not yet been paid for the work performed. We have been asked if the individual may be paid for the services rendered. The certifying officer has recognized that this individual was a de facto employee and questions her authority to compensate the person for the services rendered.


We have long held that a de facto employee may retain compensation that has been paid to him. 38 Comp. Gen. 175 (1958). Recently, we have authorized payment of compensation to a de facto employee after it was ascertained that the employee's status was that of a de facto employee. 52 Comp. Gen. 700 (1973) and 55 id. 109 (1975). In ~~both of these cases~~ *two other* cases, individuals performed services in good faith, under color of authority, but without a valid appointment. ~~In each case~~ *and*, at the time of termination, the individuals had received no compensation for the services performed. In both cases we authorized payment. The facts of the instant case follow the same pattern, and the above-cited cases are controlling here.

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The submission also asks what documentation is need to support the payment to the de facto employee. This decision is the authority for that payment, and need be accompanied only by appropriate time and attendance records.

✓ Accordingly, the individual involved may be compensated for services performed, even though that person never received a valid appointment.


Deputy Comptroller General
of the United States